

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

2. The petitioner was married in July of 2001 to a woman who is a Philippines citizen. She has a minor child who lives with her. Mother and child have continued to live in the Philippines since the marriage although they visited the United States for a month in April of this year when the petitioner had heart surgery. While they were in this country, they stayed at an apartment in Massachusetts that the petitioner used as a base when he was employed.

3. The petitioner gave this Massachusetts address to the Immigration and Naturalization Service as his wife's address because she is required by INS to have a home in the United States while her visa application is pending. He did not give his Vermont address because his home in Rutland is also occupied by his parents and other family members and he does not have room for his wife and stepchild at that location.

4. There is no dispute that the petitioner is supporting his wife and stepchild though they continue to live abroad. He sends them \$600 per month. His wife does not work because, according to the petitioner, her culture does not condone it when she has a husband to support her. When he was working on a flight crew, the petitioner was able to see his wife frequently. That is more problematic now that he does not travel regularly although he is still able to obtain free flights through his former employer. However, the petitioner is still hoping that his wife will eventually feel comfortable about moving to this country.

5. The petitioner was left with no disability insurance or source of income when he became ill. He applied for RUFA benefits on May 28, 2002. He was denied on June 3, 2002 based

on a finding that there are no children in the petitioner's home.

6. During the course of the hearing, the petitioner stated that he was living off of his savings which are being rapidly depleted. At the time of his application, he had \$38,000 in the bank. At the time of the hearing he was down to \$31,000. The worker who reviewed the application thought erroneously that the amount of resources reported was only \$380.00.

ORDER

The decision of the Department to deny the petitioner's application is affirmed.

REASONS

Because of the erroneous reading of the petitioner's application, PATH was not aware until the hearing that the petitioner had \$38,000 in a savings account at the time of application. In addition to the grounds alleged on the notice, PATH also asked that its decision be affirmed because the petitioner is considerably over the resource limit.

The regulations place a limit of \$1,000 on the amount of resources a person can have and still be eligible for the RUFA

program. W.A.M. 2261. As the petitioner was \$37,000 over that limit at the time of application and continues to be well over that limit at present, PATH is correct that the petitioner is ineligible based on excess resources and the denial must be upheld by the Board on that basis. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

Because the petitioner is not financially eligible for the program, it is not necessary to determine whether or not he has a "child in his home" within the meaning of the RUFA regulations. The petitioner should be aware, however, that PATH takes the position that even if he were to exhaust his savings down to the \$1,000 limit, his wife and child would have to live with him in his home in Vermont in order to obtain RUFA benefits. The petitioner is urged to discuss these requirements in more detail with his PATH worker. If this should become the only impediment to his eligibility at some point in the future, and the petitioner disagrees with PATH's position, he may file a fair hearing on that issue at that time.

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